

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

PERDUE FARMS, INC.

Employer

and

Case 26-RC-8476

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 227**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Perdue Farms, Inc., operates a poultry processing facility in Cromwell, Kentucky. The Petitioner, United Food and Commercial Workers Union, Local 227, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent the Employer's maintenance employees, including general maintenance mechanics, IT electronic techs, electricians, and refrigeration operators, as well as supply clerks and waste water operators. Following a hearing before a hearing officer of the Board, the parties filed briefs with me.

The sole issue raised at the hearing is whether a separate unit consisting of maintenance employees, supply clerks, and waste water operators is appropriate for purposes of collective bargaining. The Petitioner asserts that the proposed unit is

appropriate because the approximately 55 employees in the petitioned-for-unit possess a separate and distinct community of interest. Contrary to the Petitioner, the Employer contends that the only appropriate unit is one that also includes its approximately 857 production employees, 23 quality assurance employees, 2 laundry clerks, 4 housekeepers, 1 materials clerk, 4 water plant operators, 1 groundskeeper and 1 lab tech because these employees share a community of interest with those in the petitioned-for unit. The Employer's proposed unit would include about 893 employees.

I have considered the evidence presented at the hearing and the arguments advanced by the parties. As discussed below, I have concluded that the maintenance employees, supply clerks and waste water operators do not share a sufficiently separate community of interest to find a separate unit appropriate and I have directed an election in a production and maintenance unit consisting of approximately 938 employees.

To provide a context for my decision and discussion of these issues, I will first present an overview of the Employer's operations. Next, I will discuss the legal standard, and then the facts relevant to that legal standard, followed by my analysis of the appropriate unit issue.

I. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer operates a two-story production facility in Cromwell, Kentucky where it produces poultry products for retail supermarket customers. The production process begins when live chickens are received at the live receiving area. There, chickens are conveyed inside the plant, processed through a series of production

departments, converted into edible product, stored and shipped. The production process lasts 2 hours and 45 minutes and involves over 1,000 pieces of equipment.

In addition to the production facility, the Employer also maintains a separate environmental services building at its Cromwell facility that is located about one city block from the production facility. The primary functions of the environmental services operation are to purify water taken from the Green River for use in the production process and to return treated waste water into the river after that use.

The Employer operates three shifts Monday through Friday and on some weekends depending on customer demands. Production takes place on the first and second shifts, both of which are eight hours. The third shift is a sanitation and preventative maintenance shift during which time production equipment is repaired and sanitized in accordance with United States Department of Agriculture ("USDA") regulations.

About 1,100 hourly-paid employees work at the Cromwell facility. The overall facility contains numerous production departments, as well as quality assurance, maintenance, materials, and environmental services departments.

II. LEGAL STANDARD

It is the Board's longstanding policy, as set forth in *American Cyanamid Co.*, 131 NLRB 909 (1961), to find petitioned-for separate maintenance department units appropriate where the facts of the case demonstrate the absence of a more comprehensive bargaining history and the petitioned-for maintenance employees have a community of interest separate and distinct from other employees. *Buckhorn, Inc.*, 343 NLRB No. 31 (2004). In deciding whether the requisite community of interest exists

among maintenance employees, the Board looks to such factors as functional integration; mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; and frequency of contact and interchange with other employees. *Id.* citing *TDK Ferrites Corp.*, 342 NLRB No. 81 (2004); *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019 (1994) *enfd.* 66 F.3d 328 (7th Cir. 1995). Here, there is no evidence of a more comprehensive bargaining history and the Petitioner seeks a unit comprised mainly of maintenance employees. Accordingly, I will examine the evidence to ascertain whether the maintenance employees, supply clerks and waste water operators possess a separate and distinct community of interest. *Buckhorn, Inc.*, *supra*.

III. FACTS

A. Job Duties and Functional Integration

Production Departments: The production operations consist of about 21 different departments and involve the work of about 857 production employees whose principle function is to process live chickens that are brought to the facility from nearby farms. Live chickens are first received by production employees in the live receiving area. There, chickens are conveyed inside the plant in holding containers, removed by production employees and hung up on shackles connected to an overhead conveyor or picking line. The chickens are then stunned, killed and placed in a series of scald tanks that are designed to loosen feathers. At the completion of this process, production employees cut and transfer the chickens to a gas flame singler that removes any remaining hair. With the exception of the shank and feet, the chickens are then transferred to the evisceration department. The shank and feet are transported to the

paw room where they are scalded, picked, chilled, graded and packed by production employees for export to China.

In the evisceration department, chickens are cleaned by production employees and inspected by quality assurance employees to ensure the product is in a “ready-to-eat” state. After being inspected, the chickens are chilled in the chiller area, which is manned by a production employee, so that their internal temperatures are cooled to a level that meets USDA standards.

The chickens are then conveyed to the grade and hang department where they are examined, graded and directed for further processing by production employees. Whole chickens weighing 5½ pounds that receive a grade A are stored and prepared for shipping. Whole birds that do not receive a grade A are either weighed, injected with a flavored solution according to customer specifications, bagged and boxed by production employees, or sent to the cut-up area where they are cut into parts, graded, placed into trays, wrapped with plastic, and stored by production employees. Chickens that exceed eight pounds are either graded and boxed to fill customer orders or cut into parts and packed.

The Employer maintains a 19,000 square foot cooler on the second floor of the facility that is used to store processed chickens. Upon receipt of customer orders from its corporate headquarters in Salisbury, Maryland, production employees will locate products in the cooler and send them by conveyor to the weigh/price/label department. Production employees then weigh, label, pack and send the products by conveyor to the dry cooler located on the first floor. The customer order is then loaded onto a truck by shipping department employees and delivered to the customer.

Quality Assurance Department: The quality assurance department consists of about 23 quality assurance employees who perform a variety of tasks throughout the production process including inspecting chickens to ensure compliance with USDA and company standards, monitoring condensation levels, and checking room temperature and product temperature levels.

Maintenance Department: The maintenance department includes about 32 general maintenance mechanics, 3 IT electronic techs, 4 electricians and 6 refrigeration operators (collectively referred to herein as “maintenance employees”). General maintenance mechanics, also referred to as general maintenance employees, are assigned to various production departments including live receiving, picking, evisceration, and cut-up. Collectively, they are primarily responsible for maintaining, repairing and adjusting equipment used by production employees during the production process. This work includes repairing shackles that transport chickens along the conveyor lines, straightening yokes, replacing trolley wheels attached to the conveyor lines and repairing hand-jacks used to cart product to delivery trucks. Maintenance mechanics also make preparations for third shift operations by laying out fittings, cutting hoses and welding frames. Virtually all of their time is spent working on the production floor. The tasks that they perform are considered to be repetitive and do not include major maintenance project work, which is frequently contracted out.

IT electronic techs and electricians perform a variety of tasks throughout the production facility including, installing new production equipment, replacing conduit and wires on production equipment, replacing bulbs in overhead lights at inspection stations, monitoring foot candles and lighting, reprogramming and resetting electrical controls on

hydraulic systems that transport chickens into the facility, repairing fans that keep chickens cool, performing grounding checks on electrical stimulation cabinets operated by production employees, repairing scales used to weigh product shipped to customers, and maintaining fire alarm systems. Unlike maintenance mechanics, IT electronic techs and electricians are not assigned to a particular production department. They spend approximately 75 to 80 percent of their time on the production floor responding to breakdowns and repair requests in production areas. The rest of their time is spent checking equipment, resetting breakers and taking voltage readings in the electrical room - a non-production area.

Refrigeration operators are responsible for the maintenance and upkeep of refrigeration systems, compressors, hot water vessels and boilers throughout the production facility. They also resolve problems associated with sensors, thermo couplings, air flow, condensation formation and temperature levels. Refrigerator operators are not assigned to specific production departments but are instead assigned to specific pieces of equipment or parts of equipment located throughout the plant. Nearly 50 percent of their time is spent performing work in production areas.

Materials Department: The materials department is located in the production facility and consists of the following functions: supply, laundry, housekeeping and purchasing. Five supply clerks work in the Employer's supply room located inside the production facility between the maintenance shop and evisceration department. They are responsible for issuing maintenance supplies, such as nuts, bolts, washers and hoses, to maintenance employees and production supplies, such as smocks, gloves, hairnets, earplugs and goggles, to production supervisors and under certain

circumstances, production employees. Supply clerks occasionally go into the production areas to retrieve carts and lab coats. Supply clerks also assist laundry clerks with cleaning items worn by maintenance and production employees.

Two laundry clerks work in the laundry room located inside the production facility and are responsible for laundering lab coats, smocks, gloves, and smocks worn by maintenance and production employees. They also spend part of their day working in the supply room performing supply clerk tasks.

Four housekeepers also work inside the production facility and are responsible for cleaning various areas of the facility, picking up trash in the production area, restocking facility restrooms and cleaning offices.

The Employer employs one materials clerk who is responsible for ordering maintenance and production supplies for the supply room, distributing supplies in the supply room, taking inventory of hydraulic fittings in the supply room, and stocking supplies.

Environmental Services Department: The environmental services department is comprised of four water plant operators, five waste water operators, one lab tech and one groundskeeper. Water plant operators are responsible for purifying river water that is pumped into the facility and used in the production process to clean chickens, fill up scalders and chillers, and clean production equipment. On the weekends, water plant operators shut down operations in the screening room on Saturday and restart them on Sunday and take readings that are normally performed by waste water operators. Waste water operators, also referred to as offal operators and screening room operators, screen solids, such as chicken feathers and feet, from the water that is used

in the plant. Once screened, the water is treated, disinfected and returned to the Green River. The Employer's lab tech gathers, analyzes, and performs tests on waste water samples. The groundskeeper mows grass and cuts weeds on the 300 acre facility.

B. Wages, Hours and Working Conditions

With the exception of refrigeration operators and water plant operators who work 12-hour shifts, employees work eight-hour shifts. Production employees work Monday through Friday, and Saturdays only when production is running, on either the 5:03 a.m. first shift or 1:30 p.m. second shift, and work 40 to 45 hours a week. General maintenance employees, IT electronic techs and electricians are assigned to the same shifts as production employees, as well as a third shift that starts at 10:30 p.m. Unlike production employees, general maintenance employees, IT electronic techs and electricians also routinely work overtime on weekends. For example, general maintenance employees work weekend overtime on a rotating basis and average between 46 to 48 hours a week. IT electronic techs have weekend overtime schedules similar to general maintenance employees and one IT electronic tech testified that during May 2005 he worked from 48 to 54 hours per week. One electrician testified that in recent months, electricians have worked 10 to 12 hours of weekend overtime.

To provide extra coverage during shift changes, the busiest times of the day, supply clerks work staggered shifts starting at 6 a.m., 7:30 a.m., 1 p.m., 4:30 p.m., and 10:30 p.m. While the materials manager testified that the supply room is staffed until 4 p.m. on Saturdays, it is not clear whether this is overtime work. Housekeepers work Monday through Friday on shifts starting at 4:15 a.m., 8 a.m., 4 p.m. and 7:30 p.m. Laundry clerks work Monday through Friday, and on Saturdays when production is

running, on shifts starting at 6 a.m. and 2:30 p.m. The materials clerk works from 7 a.m. to 3:30 p.m., Monday through Friday.

The waste water operators work Monday through Friday on the following shifts: 7 a.m. to 3 p.m., 7 a.m. to 3:30 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7:30 a.m. The groundskeeper and lab tech both work from 7 a.m. to 3:30 p.m., Monday through Friday. All environmental department employees work about 40 hours a week, with the exception of the water plant operators who average about 42 hours a week and a waste water operator who works about 4 hours of overtime a week in the water plant.

Although all employees earn an hourly wage, maintenance and environmental department employees earn more than most of the other nonsupervisory employees. In that regard, the maintenance and environmental departments have the following pay ranges: maintenance mechanics - \$11 to \$16.15; IT electronic techs - \$11 to \$14.18; electricians - \$13.73 to \$17.23; refrigeration operators - \$13.80 to \$15.80; waste water operators - \$9.90 to \$13.85; water plant operators - \$13 to \$17.50; groundskeeper - \$10.26; lab tech - \$11.05. Production employees, supply clerks, laundry clerks, and housekeepers earn \$9.51 an hour and the materials clerk earns \$12.15 an hour.

All employees use the same timekeeping system, are entitled to receive overtime pay, are paid on the same day, have the same holidays and 401(k) plans, and receive the same types of fringe benefits. Maintenance employees, supply clerks and environmental department employees receive group 3 medical insurance benefits whereas production employees, laundry clerks, and housekeepers receive group 4

benefits.¹ Group 4 benefit recipients are required to pay a slightly higher deductible during the first year of their coverage than employees receiving group 3 benefits. After the first year of coverage, the group 3 and group 4 rates equalize. Regarding vacations, employees receiving group 3 benefits are eligible for 12 days of paid time off for 2 to 10 years of employment, whereas group 4 employees are entitled to 11 days for 3 to 10 years of service.

All employees are subject to the same employee handbook policies, attendance policies, progressive disciplinary procedures, cell phone policy, leave of absence policy, peer review process and open door policy. All employees are allowed to bid on all posted jobs and are subject to the same bidding rules. Maintenance employees, production employees, supply clerks, laundry clerks, housekeepers and the materials clerk share the same restroom facilities, cafeteria, medical facility, parking area and plant entrances and exits. The environmental department employees park at the environmental building and clock in there at the start of their shifts.

While uniforms are optional and are the same for all employees, the Employer, for ease of identification, requires employees to wear bump caps and smocks that differ in color based on job classification. In that regard, maintenance employees wear orange caps and dark blue smocks and production employees wear blue caps and light blue smocks. When working in production areas, supply clerks are required to wear the same color cap and smock worn by production employees. All environmental department employees wear orange caps when performing work in hardhat areas.

¹ The Employer's lab tech receives group 2 (or clerical group) medical benefits. Group 2 benefits were not described at the hearing. No evidence was presented regarding the benefits received by the materials clerk.

A vast majority of maintenance employees carry radios on a daily basis and all of them carry tools stored in tool lockers located in the maintenance shop. All production line leaders also carry radios. All environmental department employees, with the exception of the lab tech, either carry or have access to radios. Unlike maintenance employees, production employees do not carry tools. The record does not indicate whether employees in any other positions carry tools.

A maintenance shop, electrical rooms and refrigeration office are located inside the production facility. The maintenance shop is used primarily by the general maintenance mechanics and contains work benches that are used for welding and other maintenance-related tasks. Production employees are allowed to use the shop to straighten shackles. The production facility also contains a main electrical room. Although the complex manager testified that maintenance mechanics and refrigeration operators work in this area, no evidence was presented concerning the tasks they perform or how much time they spend here. The refrigeration office is located just outside the electrical room and is used by refrigeration operators to keep log books and records. No evidence was presented showing that production employees use the main electrical room or refrigeration office.

C. Commonality of Supervision

Maintenance employees have separate supervision from production employees, with the exception of maintenance mechanic Chris Goff who reports directly to a production supervisor in the shipping department – his assigned work area. However, production supervisors possess the authority to direct the work of and discipline maintenance employees who are performing work in production areas. According to

disciplinary records presented by the Employer, a production supervisor suspended a maintenance employee for three days without pay in April 2005 for responding inappropriately to a request by the supervisor to fix a piece of production equipment.

Maintenance employees receive annual evaluations whereas production employees are evaluated less frequently. Production supervisors are involved in the Employer's evaluation of maintenance employees. This is done because production supervisors daily observe the work of general maintenance employees who work in their areas. Prior to 1998, the Employer utilized a formal evaluation process for maintenance employees that required production supervisors to complete an evaluation form and give maintenance employees a numerical rating in different performance areas. The Employer abandoned the formal process for an unspecified period of time and only received verbal input from production supervisors when preparing maintenance employee evaluations. However, shortly before the hearing, the Employer's complex manager testified that he requested that the formal evaluation method be reinstated and that has occurred.

Work assignments for maintenance employees come from maintenance supervisors, as well as production supervisors. Production supervisors will contact maintenance employees by radio, or in person, to request that repairs be made to broken equipment. The Employer's complex manager testified that maintenance employees assigned to the overwrap department (a production department) receive instructions from a production supervisor to change out the film on machines that release plastic used to cover trays.

The supply clerks, laundry clerks, housekeepers and materials clerk are supervised by the materials manager. The lab tech reports to the manager of environmental services located in the environmental service building. All of the remaining environmental department employees report to the environmental services supervisor. There is no evidence that the supply clerks, laundry clerks, housekeepers, the materials clerk, or the environmental department employees are supervised or have been evaluated by any person holding a supervisory position in the maintenance department. Nor is there any evidence that maintenance supervisors have disciplined or directed the work of these employees.

D. Degree of Skills and Common Functions

In recruiting employees to fill maintenance department and production positions, the Employer places ads in local newspapers. All applicants are required to complete the same application and are initially screened by the Employer's human resources department. Candidates for entry level maintenance and production positions are not required to possess special skills, experience or credentials. However, all maintenance department positions beyond the entry level require, at a minimum, a high school diploma and technical school training.

Contradictory testimony was presented regarding pre-employment testing. The complex manager testified that job candidates for maintenance and production positions are not required to take any pre-employment written or mechanical tests. However, an IT electronic tech testified that he was required to pass a written electronics test administered when he was interviewed for that position. The record provides no other details about the test, nor were any other examples of pre-employment testing provided.

The supply clerk position does not require any minimum level of education, specialized knowledge, licenses or related work experience. Candidates for this position are only required to possess basic reading, writing and analytical skills. Evidence was not presented regarding the specific experience or educational background required for the other classifications under consideration here, with the exception of water plant operators. These employees must possess a certain level of experience and pass a test administered by the State of Kentucky.

All newly hired employees, regardless of position, are required to attend the same orientation program and the same training sessions regarding the use and operation of production equipment. In addition to this initial training, maintenance employees receive hazardous materials training and lock out/tag out training.

One of the electricians holds a journeyman's license and three hold master's licenses from the State of Kentucky. Two IT electronic techs have degrees from technical schools. Refrigeration operators are required to obtain a RETA certification. The record does not disclose whether the Employer requires its maintenance employees to complete an apprenticeship program. While not required, the Employer's lab tech holds a lab tech certification.

E. Frequency of Contact and Interchange

Since 1996, 35 production employees have transferred from production to maintenance positions. There is no evidence of transfers from maintenance to production positions. Four of the five supply clerks transferred into their positions from production positions. All of the housekeepers were once production employees. One of

the two laundry clerks previously held a production position. The groundskeeper and four of the five waste water operators also previously held a production position.

Production employees perform a variety of tasks that are also performed by maintenance employees. For example, although unclogging pipes is considered a maintenance task, production employees unclog pipes and drains in the evisceration department and sometimes use tools when performing this task. Like maintenance employees, production employees unbolt and replace dolly wheels that are used to transport boxes of chicken to the second floor freezer. Production employees in the weigh/price/label department clean sensors on scales prior to the start of their shift. This task is normally performed by maintenance employees during the course of the shift. Production employees in the shipping area repair hand-held jacks when the maintenance employee assigned to that area is unavailable. Additionally, they have been called upon to change filters in the refrigeration systems and to clean condensers – tasks that are performed primarily by refrigeration operators – in order to allow refrigeration operators to work on other assignments.

In addition to performing maintenance tasks, production employees, including line leaders, and production supervisors contact maintenance employees to request assistance with a task or to notify them of equipment failures. This contact can be by radio or personal contact. For example, production employees in the live receiving area contact general maintenance employees to assist with fixing jams in conveyors that transport holding bins inside the plant. Refrigeration operators are contacted by production employees in the picking area to rectify calibration problems with scald tanks

and by production employees in evisceration department to resolve air flow and condensation problems.

Production and maintenance employees also work together on a host of tasks, some of which include adjusting picking machines; stacking drawers and trays in the live receiving area; moving boxes that have accumulated on the production line while scales were being repaired; cleaning out machines used in the stitch injection area; bagging chickens when production is backed up; cleaning out machines and chutes on the breast production line in order to keep production running; and repacking and rewrapping product trays. The second shift maintenance supervisor testified he and two maintenance employees spent 2 to 3 hours during a Christmas holiday opening 200 to 300 bags containing whole birds, removing giblet packets and putting them in tubs.

IT electronic techs and production employees work together to run tests on the overhead scale system. The complex manager testified that refrigeration operators and production employees recently worked side-by-side in the ice making room scraping and painting the ice maker to satisfy USDA requirements.

The Employer also routinely utilizes production employees to perform preventative maintenance work on weekends when production is not running. With the assistance of maintenance employees, these production employees repair shackles, chains and trolleys, lubricate the production lines, and replace parts on picking machines.

Supply clerks interact with maintenance employees, production supervisors and occasionally production employees when issuing supplies. Of the items stocked in the supply room, 30 percent are maintenance supplies and 70 percent are production

supplies. Supply clerks also work alongside production employees who are assigned to perform light duty work in the supply room. On a daily basis, supply clerks perform laundry duties when laundry clerks are on break. Supply clerks also sometimes retrieve carts and lab coats in production areas.

One of the laundry clerks spends 50 percent of her workday issuing supplies in the supply room. The other laundry clerk spends 25 to 30 percent of her time issuing supplies. One housekeeper has assisted in the supply room during times when the Employer was shorthanded. The materials clerk distributes supplies in the supply room when the Employer is shorthanded. She also inventories items in the supply room once a week and occasionally stocks supplies there.

Regarding the environmental department, one of the waste water operators fills in for water plant operators who are either on vacation or absent. Another waste water operator works four hours a week cross-training at the water plant. In addition to her normal duties, the lab tech also performs a significant amount of waste water operator work like cleaning the clarifier, adding chlorine and de-chlor to the package plant, putting on diffusers and taking readings. Water plant operators also perform waste water operator functions. For example, every weekend they shut down and restart waste water operations and take readings in the waste water building. The groundskeeper has worked with production and environmental department employees to remove diffusers – a task that lasts one month and is performed once every three years. He has also performed production-related tasks like stacking live crates and putting boards on the outside edges of modules that carry chickens during the winter months. Two waste water employees have occasionally performed production work.

One jockeyed trucks in the live receiving area and the other helped shipping move box trucks around.

IV. ANALYSIS

The Petitioner seeks a maintenance unit that also includes supply clerks and waste water operators. Since it is only necessary that the Petitioner seek an appropriate unit, I will first examine whether the petitioned-for employees have a sufficiently distinct community of interest to permit a finding that the petitioned-for unit is an appropriate unit. *Buckhorn, Inc.*, 343 NLRB No. 31 (2004). Next, I will determine whether a unit limited to maintenance employees is appropriate.

A. Community of Interest Among the Petitioned-for Employees

The petitioned-for employees do not share common supervision. The supply clerks are supervised by the materials manager who also supervises the laundry clerks, housekeepers, and materials clerk. Except for one employee who is supervised by a production supervisor, the general maintenance employees are supervised by the first and second shift maintenance supervisors who report to the maintenance superintendent, a position that is presently vacant. The refrigeration operators are supervised by Refrigeration Supervisor Ricky Beckman, who also reports to the maintenance superintendent. The electricians and IT electronic techs are supervised by Senior Complex IT Manager Ron Boling. The waste water operators are supervised by Environmental Services Supervisor Forrest Jameson, who reports to Environmental Services Manager David Jurgens. The materials manager, senior IT complex manager and maintenance superintendent report to Operations Manager Dan Moreno. Moreno and Environmental Manager Jurgens report to Complex Manager Terry Ashby.

With regard to wages and benefits, the wage rates of the petitioned-for employees vary from the lowest to almost the highest hourly rates at the facility. The supply clerks earn the same hourly wage as the production employees, \$9.51 an hour, the lowest wage rate. The waste water operators earn from \$9.90 to \$13.85 an hour. The maintenance employees, including the general maintenance employees, electricians, IT electronic techs and refrigeration operators, earn from \$11 to \$17.23 per hour. The highest hourly rate at the plant is earned by a water plant operator who is paid \$17.50 an hour. All the petitioned-for employees receive the same level of benefits - group 3 - and all are subject to a number of facility-wide policies such as discipline, cell phones, and holidays.

Other than the supply clerks providing supplies to the maintenance employees, there is limited functional integration among the petitioned-for employees. Nor is there any overlap in job duties between the supply clerks, waste water operators, and the maintenance employees.

With regard to frequency of contact, there is no evidence of frequent contact between the supply clerks or maintenance employees who work primarily in the production facility and the waste water operators who work in the environmental services building.

Based on the above, I find that the petitioned-for employees do not share a separate and distinct community of interest apart from other employees.

In contrast, the supply clerks do share a community of interest with the laundry clerks, housekeepers and the materials clerk who are also supervised by the materials manager. The laundry clerks spend a significant amount of time distributing supplies in

the supply room. The housekeepers and materials clerk work in the supply room when the Employer is short-handed. The materials clerk checks inventory levels in the supply room on a weekly basis and has also stocked supplies. Regarding skills, both the supply clerks and materials clerk use computers when performing their duties.

Similarly, the waste water operators share a community of interest with water plant operators, the lab tech, and the groundskeeper. First, the waste water operators, water plant operators and the groundskeeper report to the environmental supervisor who, in turn, reports to the manager of environmental services. The lab tech reports directly to the manager of environmental services. Second, they have similar wages, the same medical benefits and fringe benefits and similar work hours. They all report to work, clock in, and park at the same facility. Further, the water plant operators and lab tech regularly perform waste water operator functions.

B. Maintenance Employee Unit

Although the Petitioner seeks a unit that includes the supply clerks and waste water operators as well as the maintenance employees, its brief principally argues facts and caselaw that support the proposition that a maintenance only unit is appropriate. Accordingly, I will consider whether a unit limited to the Employer's maintenance employees – the general maintenance employees, IT electronic techs, electricians and refrigeration operators – is an appropriate unit. A number of factors persuade me that it is not.

First, there is frequent contact and interaction between the maintenance employees and the production employees. For example, general maintenance employees, more than half of the maintenance employees, spend virtually all of their

time in their assigned production area performing routine maintenance and production-related tasks alongside production employees.

Second, there is evidence of common supervision between the production and maintenance employees. Although only one general maintenance employee reports directly to a production supervisor, production supervisors have the authority to discipline general maintenance employees for violating company policies and to direct their work. Production supervisors also furnish information that is used by the Employer to annually evaluate the work performance of the general maintenance employees.

Third, there is a significant degree of overlap in job functions. Production employees perform a variety of maintenance tasks like weekend preventative maintenance work, changing dolly wheels, repairing pallet jacks, changing filters, cleaning condensers and adjusting weigh/price/label equipment. Similarly, general maintenance employees sometimes perform production tasks in their assigned production areas such as bagging chickens and rewrapping product trays.

Fourth, there is evidence of production employees transferring from production positions to general maintenance positions. There have been 35 instances of employees transferring from production to maintenance positions since 1996.

Finally, maintenance and production employees share similar terms and conditions of employment. For example, both groups are subject to the same employment policies, share similar work schedules, have the same fringe benefits, work in the same facility, share the same parking area and medical facility, and attend the same new employee training. Although maintenance employees earn a higher hourly wage than production employees, and in some instances, possess a higher degree of

skills, I find that these facts are outweighed by the other factors that demonstrate that these production and maintenance employees share a broad community of interest. *TDK Ferrites*, 342 NLRB No. 81 (2004) (finding production and maintenance employees shared broad community of interest despite higher skills and pay of maintenance employees); *Buckhorn, Inc.*, 343 NLRB No. 31 (2004) (finding separate unit of maintenance employees inappropriate even though maintenance employees earned more than production employees).

In its post-hearing brief, the Petitioner argues that a separate maintenance unit is appropriate based on cases such as *Yuengling Brewing Co. of Tampa*, 333 NLRB 892 (2001) and *Ore-Ida Foods*, 313 NLRB 1016 (1994). These cases are distinguishable and do not compel a finding that a separate maintenance unit is appropriate. In finding the petitioned-for unit appropriate in *Yuengling*, the Board relied on several factors that are not present here including, most notably, the lack of common supervision and the absence of interchange between production and maintenance employees. Here, contrary to *Yuengling*, production supervisors have the authority to direct, oversee, prioritize and evaluate the work of the general maintenance employees. Production supervisors also possess and have exercised their authority to discipline maintenance employees for rules infractions. Unlike *Yuengling* where there was no permanent interchange, here a significant number of production employees have transferred into maintenance positions.

In *Ore-Ida*, the Board's decision rested, among other things, on the fact that the employer required employees seeking to obtain maintenance positions to complete a craft apprenticeship program. The Board also noted that there was limited interchange

between production and maintenance employees. Here, there is no evidence that maintenance employee candidates are required to participate in an apprenticeship program. In fact, candidates for entry level maintenance positions are not required to have any special skills, experience or credentials. As indicated above, the evidence of interchange between maintenance and production employees is substantial.

Based on the foregoing, I find that the maintenance employees do not possess a separate community of interest. Therefore, since the Petitioner has expressed a willingness to proceed to an election in an alternate unit, I will direct an election in a unit of the Employer's production and maintenance employees, including the environmental services department employees.

V. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All maintenance employees, including maintenance mechanics, IT electronic techs, electricians and refrigeration operators, production employees (including quality assurance associates and line leaders), supply clerks, laundry clerks, housekeepers, materials clerks, water plant operators, waste water operators, grounds keepers and lab techs employed at the Employer's Cromwell, Kentucky facility.

EXCLUDED: All office clerical employees, managerial employees, professional employees, temporary employees, seasonal employees, casual employees, hatchery employees, feed mill employees, live haul drivers, chicken catchers, guards, and supervisors² as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers, Local 227. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

² The parties stipulated that the following individuals have the authority to hire, fire, or to discipline, or to effectively recommend discipline, or transfer and are supervisors within the meaning of Section 2(11) of the Act: Terry Ashby, John Trantum, Alan Rogers, Dan Moreno, David Jurgens, Lynde Hughes, Mary Wall, Gustavo Paez, Jerry Moore, Ammie Patterson, Foirrest Jameson, Jeff King, Jeff Golliher, Marigold Williams, Steve Cannon, David Klehm, Rick Cervantes, Garrett Addington, Rebecca Shouse, Ron Boling, Tim Clark, Dale Thompson, Lee Hiner, Robert Blackburn, Mike Pierce, David Burnett, Ricky W. Beckman, Jason Iler, Kenneth Hughes, Sean Hamina, Jason Bittle, Robin Pharis, Steve Carman, Gary Thrower, Mitch Jackson, John Fowler, Larry Hunt, Jack Sheffield, Jessie Raymer, Karen Payne, Richard Groves, Diana Jones, Angie Lindsey, Becky Bishop, Melissa Smallwood, Maureen Westerfield, Andrew Card, Angel Coffey, Nancy Blair, Raymond Adcock, Ramon Guzman, Heath Kelly, Patricia Johnson, Sara Munoz, Billy Tolle, Jackson Mayhall, Francis Tolle, Jeff Jones, Lois Wortham, Barry Pendley, Willy Nabours, Bobby Wagner, Samuel L. Hooper, Christopher Creech, Charlie Beeler, Charles W. Everley, Gordon Tomblinson, Donald S. Greer, Terry F. Blackburn, Jenny Fain, Albert English, Jason Burden, Tracy McKenney, Dana Dennis, Brandy Murphy, Katie Escue, and Gary Smith.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.).

To be timely filed, the list must be received in the Regional Office, The Brinkley Plaza Building, 80 Monroe Avenue, Suite 350, Memphis, TN 38103-2416, on or before **July 14, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or at (615) 736-7761 or may be sent by e-mail to Region26@nlr.gov or Resnash@nlr.gov. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **July 21, 2005**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 7th day of July 2005.

/S/[Ronald K. Hooks]

Ronald K. Hooks
Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627